

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 808 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DITIYABHAI MALJIBHAI TADAVI

Versus

STATE OF GUJARAT

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Appearance:

MR DF AMIN for Appellant

MR SR DIVETIA APP for Respondent No. 1

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/11/98

ORAL JUDGEMENT

Heard learned advocate Mr. D.F.Amin for the appellant and the learned APP Mr. S.R.Divetia for the State.

2. Present appeal has been preferred by the accused in Criminal Case No. 220/96, against the judgment and

order dated 15th July, 1998, passed by the learned Additional Sessions Judge, Panchmahals, convicting the accused for offence punishable under section 304 (II) IPC and imposing a sentence of RI for four years and a fine of Rs.1,000/-, and in the event of default in payment of fine, SI for two months.

3. The facts leading to the present appeal are as under :-

3. On 12th April, 1996, one Ratansing Dalsing lodged a complaint in Limkheda Police Station to the effect that on that date i.e. on 12th April, 1996, at around 12-00 O'clock in the noon, the accused went to the home of the deceased Sartanbhai Kachrabhai and picked up a quarrel in respect of some financial matters and dragged the deceased Sartanbhai out of the house, hit him on the ground and on a berry trunk lying under the haystack, and as a result of the same, Sartanbhai received severe injury on his head and died on the spot. Pursuant to the said complaint, an offence punishable under section 302 IPC was registered against the accused and Sessions Case No. 220/96 was registered against the accused. The accused was tried by the learned Additional Sessions Judge, Panchmahals, and was convicted and sentenced as aforesaid under the impugned judgment and order dated 15th July, 1998. Feeling aggrieved, the appellant has preferred the present appeal.

4. In support of the charge framed against the accused, the prosecution has examined the complainant who happened to be an eye-witness at Ex-12, two other eye-witnesses (1) Velaben Kachrabhai at Ex.21; and (2) Laludiben Sartanbhai at Ex.22. The Inquest Panchnama (Ex-15), Panchnama of the scene of the offence (Ex-16), and the Panchnama of the dead-body (Ex-17) are proved by the Panch witness Punia Nurji (Ex-14), Post Mortem Note (Ex-19) is proved by the Medical Officer Kailash Ramchandra Devda (Ex-18). The prosecution has also examined the Police Officers Ranjitsinh Ramsinh (Ex-23) and Jokhabhai Manabai Baria (Ex-24). The defence has not examined any witness.

5. The complainant Ratansing Dalsing is the nephew of the deceased Sartanbhai Kachrabhai. He has deposed that his home is situated opposite the home of the deceased Sartanbhai; that the haystack is outside the house of the deceased Sartanbhai and is visible from his house; that at the time of incident, he was returning from the market and saw the accused quarreling with the deceased Sartanbhai in the house of the deceased

Sartanbhai; that the accused dragged Sartanbhai out of his house and brought him under the haystack; that in the scuffle, the deceased hit the pillar of the haystack that the accused picked up the deceased and hit him on the berry trunk lying under the haystack, that on account of the shouts of the deceased, the complainant ran and went there. The other two witnesses viz. Velaben and Laludiben and one Savitaben also went running to the spot. The accused left the place of incident and went home. The deceased had received severe injuries on his ear; that a Doctor was summoned. Though the Doctor advised that the deceased would not survive and be taken to Dahod, infact, the deceased had died on the spot; that thereafter one Manojkumar and Narsing Dalsing were summoned and a complaint was lodged at Limkheda Police Station. In the cross-examination, he has stated that the house of the deceased was opposite the house of the witness and that the haystack was visible from his house. He has also stated that he had gone to the Police Station in the company of one Manojbhai and the complaint was given by the said Manojbhai and after he said that it was properly recorded, the witness had put his thumb impression. He has also stated that while the deceased was being dragged, he hit the pillar of the haystack and fell down on the berry trunk lying beneath it. Witness Punia Nurji has proved the Panchnamas Exs. 15, 16 and 17. Witness Kailash Ramchandra Devda is the Medical Officer who has performed Postmortem and had proved the Postmortem Note (Ex-20). He has said that the deceased had sustained injuries on chest, stomach, shoulders, arms, and thigh; that his ear was bleeding profusely; right hand side of the head was covered with blood. He further stated that the deceased had died on account of hemorrhage suffered by him due to the injury caused on the head. Such an injury can be caused if a person is hit to a log of wood or even if he falls down on a log of wood. Witness Velaben is the mother of the deceased. She has corroborated the evidence of the complainant Ratansing Dalsing. She also has stated that the accused had gone to the house of the deceased and had picked up quarrel in respect of some financial matter, and beat the accused and dragged him out of the house, he had hit the deceased on the ground, he hit the deceased 2 to 3 times under the haystack, that she had tried to stop the accused, but he threw the deceased on the berry trunk lying under the haystack which caused fatal injury to the deceased. In cross-examination she has stood by her testimony. She has also stated that her son (deceased) hit the pillar of the haystack and had fallen down on the berry trunk. Witness Laludiben is the daughter of the deceased. She too has corroborated the testimony of the

complainant. She has categorically stated that the deceased was hit on the ground twice by the accused, once on the berry trunk lying under the haystack which caused the fatal injury. In cross-examination, she has denied the suggestion that the deceased had sustained fatal injury due to fall and not because he was hit on the berry trunk by the accused.

On perusal of the above evidence, it is evident that the deceased died on account of the hemorrhage suffered by him due to fall on the berry trunk. It is established that the incident in question happened at around 12-00 Noon on 12th April, 1996; that the accused had gone to the house of the accused; that a quarrel had ensued on account of some financial matter; that the deceased was dragged out of his house and was brought under the haystack by the accused; that the accused had over-powered the deceased; beat him and had hit him on the ground. The deceased fell on the berry trunk lying under the haystack and sustained injury on the head which caused hemorrhage, and on account of hemorrhage suffered by him, died on the spot. The injuries sustained by the deceased have been proved by the Postmortem Note and the evidence of Dr.Kailash Devda.

The learned Additional Sessions Judge, Panchmahals, tried the accused-appellant. He recorded the finding that the deceased had died of the injury caused on account of his hitting the berry trunk and that the complainant had hit the deceased on the berry trunk. The learned Judge held that the death had occurred on account of the quarrel which had ensued on account of certain dispute on some financial matter and, therefore, the accused can not be held guilty of committing culpable homicide amounting to murder. The learned Judge, therefore, acquitted the accused of the charge punishable under section 302 IPC. The learned Judge held that it was in the heat of the moment that the accused hit the deceased on the berry trunk causing him fatal injury without any intention to cause death. The learned Judge, therefore, convicted the accused for commission of offence punishable under section 304 (II) IPC.

Mr. Amin has submitted that it is apparent that while the deceased was being dragged by the accused, he hit the pillar and fell down on the berry trunk lying there which caused the fatal injury. Thus, it was a purely accidental death. The accused can not be said to have hit the deceased on the tree trunk as alleged. At

the most, the accused can be said to be guilty of committing the offence punishable under section 337 IPC, and in no circumstances, he can be said to have committed offence under section 304 IPC. He has emphasised that the complainant Ratansing Dalsing has admitted that the complaint was given by Manojbhai and not by the complainant himself. He has further emphasised on the statement made in cross-examination by the complainant Ratansing and the witness Velaben Kachrabhai; that the deceased had hit the tree trunk on account of fall after hitting the pillar of the haystack. Mr. Amin has also argued that the complainant Ratansing reached the spot only after he heard the shout and he has stated that the witness Velaben and Laludiben reached the spot after the deceased fell down and therefore the statements made by the witnesses Ratansing and the witness Laludiben are contradictory and neither of them can be said to be the eye-witness. Mr. Amin has, therefore, submitted that the appeal deserves to be allowed and the conviction under section 304 (II) ordered by the learned trial Judge requires to be quashed and set aside.

Mr. Divetia has contested this appeal, and has submitted that the offence has been proved beyond doubt; that on account of the accused's hitting the deceased, the deceased suffered a fall on the tree trunk which caused fatal injury. He has, therefore, submitted that the appeal deserves to be dismissed and the conviction and sentence requires to be confirmed.

It is true that the complainant Ratansing has admitted that the complaint was given by Manojbhai, and after he said that it was properly recorded, he put the thumb impression. In my view, however, merely because the complaint was given by Manojbhai, the conviction can not be interfered with. It should be borne in mind that the complainant is an illiterate person and he may not be able to give the complaint properly of his own, and he may need some assistance. The said witness has stood by his complaint and there is no contradiction in the complaint recorded by the police and the deposition before the court. The complainant also stated that the deceased was hit on the ground by the accused. The said fact has been reiterated by the eye-witness Velaben and Laludiben. There is no reason why the said statements should not be believed. The witness Velaben is also an illiterate lady of 70 years of age. The complainant and the other witnesses being illiterate, may not have understood the nicety of language i.e. both have in cross-examination have stated that the deceased fell down on the tree trunk after he hit the pillar of the

haystack. In my opinion, the said statement can not mean that the deceased had fell down on the tree trunk on account of the collision with the pillar and not on account of his being hit on the tree trunk by the accused. Even witness Laludiben has reiterated that the deceased was hit on the ground by the accused. The suggestion that the deceased had fallen down on the tree trunk has been categorically denied by the witness Laludiben and she has asserted that that the deceased was hit on the tree trunk by the accused. It is, therefore, proved beyond doubt that the deceased died on account of the injuries sustained by him due to his having been hit by the accused. The accused has, therefore, been rightly convicted for committing culpable homicide not amounting to murder. It is evident that the incident took place on account of some quarrel on some financial matter, which resulted into a free fight. No intention to cause death can be attributed to the accused. The accused has, therefore, been rightly convicted under section 304 (II) IPC by the trial court.

For the reasons recorded hereinabove, the conviction recorded by the learned trial Judge, and the sentence imposed by him, are confirmed. The appeal is dismissed.

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